gaged in the hay and straw business, and paid for the same with a cheque. The infant failed to perform his part of the contract, and never delivered the hay. The plaintiff brought an action for damages for breach of the contract, or in the alternative for money had and received. Defendant pleaded infancy as a defense. *Held,* Plaintiff could not recover the consideration paid, unless able to show that his action was in substance *ex delicto* by proving fraud on the part of the defendant. *Cowern* v. *Nield,* (1912) 2 K. B 419.

The principal case represents the line of decision on this point to be followed in the English courts. A different conclusion would probably be reached in most of the courts of this country. A trading contract of an infant is voidable at the infant's election, "when he repudiates the contract, however, he no longer has any right to the consideration which he has received: and if he still has it, the other party may maintain an action to recover it." TIFFANY, PERSONS & DOMESTIC RELATIONS, § 418. Where the consideration is other than money, replevin will lie. *Badger* v. *Phinney,* 15 Mass. 359, 8 Am. Dec. 105: *Commission Co.* v *.Smith,* 86 Mo. App. 490. Equity will refuse to lend its aid to disaffirmance, unless the infant returns all of the consideration which he still has. *Stull* v. *Harris,* 51 Ark. 294; *Strain* v. *Wright,* 7 Ga. 568. Disaffirmance will not be allowed in an action against the infant on the contract, unless the consideration is returned, or a showing is made that it is not within the power of the infant to return it, e. g. that he has squandered the entire consideration. *Hall* v. *Butterfield,* 59 N. H. 354; *Bartlett* v. *Bailey,* 59 N. H. 408; *Dickerson* v. *Gordon,* 5 N. Y. Supp. 310. The facts of the case last cited are almost identical with those of the principal case. It seems that the English court loses sight of the maxim, which the American cases apply, viz: "The plea of infancy is to be used as a shield, not as a sword." See also, 8 MICH. L. REV. 65; 26 L. R. A., 177, note.

CORPORATIONS—EFFECT OF CORPORATION'S INSOLVENCY ON THE RIGHT TO RESCIND A PURCHASE OF STOCK.—Petitioner alleges that he was induced by the fraudulent representations of the officers and agents of defendant bank to purchase 100 shares of its capital stock; that he did not learn of the insolvent condition of the bank until it was adjudged insolvent and a receiver was appointed, sixteen months after the purchase; and that the officers of the bank had repeatedly, and up to the time the doors of the bank were closed, made to petitioner representations of the flourishing conditions of the bank, Defendant demurred. *Held,* that the demurrer should have been overruled; that the mere insolvency of the incorporation and the appointment of a receiver do not themselves bar petitioner's right to a rescission, and that the complaint does not show such laches on the part of petitioner as should bar a recovery. *People* v. *California Safe Deposit & Trust Co. et al.* (Cal. 1912) 126 Pac. 516.

It is the settled law in England that a stock subscription cannot on the ground of fraud, be repudiated after the incorporation has been insolvent, and has made an assignment or gone into the hands of a receiver or assignee in bankruptcy, even though the fraud may not have been discovered before

the insolvency, and though there may have been no laches in discovering it. 1 THOMP., CORP. (Ed. 2), § 736; 1 COOK, CORP. (Ed. 6), § 163; 2 CLARK & MARSHALL, CORP., § 473; 10 CYC. p. 441; *Bank* v. *Newbegin*, 74 Fed. 135, 20 C. C. A. 339, 33 L. R. A. 727. It is difficult to reconcile the American authorities. That the American rule is the same in principle as the English and differs only in application, see 10 CYC. 441 and numerous cases there cited, also, COOK, CORP. (Ed. 6) § 164 and cases cited. But by the weight of authority there may, under exceptional circumstances, be a rescission even after insolvency. 1 THOMP. CORP. (Ed. 2), § 737. The contract to take stock in a corporation, induced by fraudulent representations on the part of the directors and officers of the corporation, is not void, but only voidable at the option of the stockholder. MORAWETZ, CORP. (Ed. 2), §§ 108, 839; 1 CLARK & MARSHALL, CORP., § 473a; 1 THOMP., CORP. (Ed. 2), § 734; 1 COOK, CORP. (Ed. 6), § 151; *Upton* v. *Englehart*, 3 Dill. 496, 504, 28 Fed. Cas. 835; 10 CYC. p. 423. A purchaser of national bank stock from the bank itself cannot, after the bank has passed into the hands of a receiver, defend against the statutory liability on the ground of fraud inducing him to purchase, unless he proves acts of diligence which negative any charge of negligence, and also proves that no debt was created nor credit given the bank after he became such stockholder. *Wallace* v. *Hood*, 89 Fed. 11, affirmed in 182 U. S. 555; *Briggs* v. *Cornwell*, 9 Daly (N. Y.) 436; 10 CYC. 441; 1 COOK, CORP. (Ed. 6), § 164. Nor can one who has been induced to become a shareholder in a corporation by fraudulent representations recover the amount paid by him on his subscription, after the corporation has become insolvent, until the claims of creditors are satisfied. 10 CYC. p. 441; *Turner* v. *Grangers' L. etc. Ins. Co.*, 65 Ga. 649, 38 Am. Rep. 801; *Howard* v. *Glenn*, 85 Ga. 238, 11 S. E. 610, 21 Am. St. Rep. 156; *Ogilville* v. *Knox Ins. Co.*, 22 How. 380; *Moosbrugger* v. *Walsh*, 89 Hun. (N. Y.) 564, 35 N. Y. Supp. 550; MORAWETZ, CORP. (Ed. 2) § 839; *Ruder* v. *Marander*, 66 Ind. 486; *Duffield* v. *Barnum Wire & Iron Works*, 64 Mich. 293, 31 N. W. 310; *Howard* v. *Turner*, 155 Pa. St. 349, 35 Am. St. Rep. 883; *Ruggles* v. *Brock*, 6 Hun. 164. A stockholder cannot rescind unless he can show there are no creditors who became such while he held the shares of stock. *Wallace* v. *Hood*, 89 Fed. 11, 18; *Dettra* v. *Kestner*, 147 Pa. St. 566. Probably a repudiation of the contract and an offer to rescind, or the institution of a suit for that purpose, before the insolvency proceedings are begun is sufficient. *Upton* v. *Englehart*, 3 Dill. 496; *Savage* v. *Bartlett*, 78 Md. 561; *Upton* v. *Triblecock*, 91 U. S. 45 (dissenting opinion); *Reese River Silver Min. Co.* v. *Smith*, L. R. 4 H. L. 71, 39 L. J. Ch. N. S. 849; *Ramsey* v. *Thompson Mfg. Co.*, 116 Mo. 313. The principal case follows the case of *Merrill* v. *Florida Land & Improvement Co.*, 60 Fed. 18, 8 C. C. A. 444. It differs from *Wallace* v. *Hood*, supra, in that here no statutory liability was involved; but since the petition did not show that there were no creditors who had become such while petitioner held the stock, in the light of the above authorities, there is reason for thinking that the demurrer should have been sustained.

CORPORATIONS—ULTRA VIRES—CONTRACTS.—Defendant corporation sold 100 shares of its capital stock to plaintiff, agreeing to repurchase it on demand at